

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MELISSA MOSHER,	)	
	)	No. CV-10-182-JPH
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
MICHAEL J. ASTRUE, Commissioner	)	
of Social Security,	)	
	)	
Defendant.	)	
	)	
	)	

---

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on October 7, 2011<sup>1</sup> (ECF No. 15, 23). Attorney Maureen J. Rosette represents Plaintiff; Special Assistant United States Attorney Kathryn A. Miller represents the Commissioner of Social Security (Commissioner). The parties have consented to proceed before a magistrate judge (ECF No. 7). On May 16, 2011, plaintiff filed a reply (ECF No. 25). After reviewing the administrative record and the briefs filed by the parties, the court **grants** Defendant's Motion for Summary Judgment (**ECF No. 23**) and **denies** Plaintiff's Motion for Summary Judgment (**ECF No. 15**).

**JURISDICTION**

Plaintiff protectively applied for disability insurance benefits (DIB) and supplemental security income on July 25, 2008,

---

1

Because the briefing is complete the Court considers the case before the hearing date.

1 alleging disability as of May 12, 2005, due to mental impairments  
2 (Tr. 98-99, 102-111, 119, 123). The applications were denied  
3 initially and on reconsideration (Tr. 61-64, 67-68, 69-70).

4 At a hearing before Administrative Law Judge (ALJ) Moira  
5 Ausems on October 21, 2009, plaintiff, represented by counsel, and  
6 a vocational expert testified (Tr. 31-56). On March 5, 2010, the  
7 ALJ issued an unfavorable decision (Tr. 13-24). The Appeals  
8 Council denied Ms. Mosher's request for review on May 21, 2010  
9 (Tr. 1-3). Therefore, the ALJ's decision became the final decision  
10 of the Commissioner, which is appealable to the district court  
11 pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for  
12 judicial review pursuant to 42 U.S.C. § 405(g) on June 7, 2010  
13 (ECF No. 1, 4).

#### 14 **STATEMENT OF FACTS**

15 The facts have been presented in the administrative hearing  
16 transcript, the ALJ's decision, the briefs of both plaintiff and  
17 the Commissioner, and are briefly summarized here.

18 Plaintiff was 25 years old at onset (Tr. 98). She completed  
19 the eighth grade and earned a GED (Tr. 33, 171, 241). She has  
20 worked as a housekeeper, fast food worker, kitchen helper, and  
21 telephone solicitor (Tr. 34-38, 51-52). Plaintiff asserts she is  
22 unable to work due to PTSD, a personality disorder, depression,  
23 anxiety, and audio hallucinations. Ms. Mosher testified she sees a  
24 counselor once a month and a doctor for medication management once  
25 every three months. Activities include cooking, cleaning, laundry,  
26 driving, shopping, and caring for two children, age 2 and 13 at  
27 the time of the hearing (Tr. 34, 39-44, 48, 123, 130, 132-134).  
28 She experiences anxiety when around crowds, shops with her mother

1 or partner, and goes to appointments alone (Tr. 46-47, 49-50).

2 **SEQUENTIAL EVALUATION PROCESS**

3 The Social Security Act (the Act) defines disability as the  
4 as the "inability to engage in any substantial gainful activity by  
5 reason of any medically determinable physical or mental impairment  
6 which can be expected to result in death or which has lasted or  
7 can be expected to last for a continuous period of not less than  
8 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act  
9 also provides that a Plaintiff shall be determined to be under a  
10 disability only if any impairments are of such severity that a  
11 plaintiff is not only unable to do previous work but cannot,  
12 considering plaintiff's age, education and work experiences,  
13 engage in any other substantial gainful work which exists in the  
14 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
15 Thus, the definition of disability consists of both medical and  
16 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
17 (9<sup>th</sup> Cir. 2001).

18 The Commissioner has established a five-step sequential  
19 evaluation process for determining whether a person is disabled.  
20 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
21 is engaged in substantial gainful activities. If so, benefits are  
22 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,  
23 the decision maker proceeds to step two, which determines whether  
24 plaintiff has a medically severe impairment or combination of  
25 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

26 If plaintiff does not have a severe impairment or combination  
27 of impairments, the disability claim is denied. If the impairment  
28 is severe, the evaluation proceeds to the third step, which

1 compares plaintiff's impairment with a number of listed  
2 impairments acknowledged by the Commissioner to be so severe as to  
3 preclude substantial gainful activity. 20 C.F.R. §§  
4 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P  
5 App. 1. If the impairment meets or equals one of the listed  
6 impairments, plaintiff is conclusively presumed to be disabled.  
7 If the impairment is not one conclusively presumed to be  
8 disabling, the evaluation proceeds to the fourth step, which  
9 determines whether the impairment prevents plaintiff from  
10 performing work which was performed in the past. If a plaintiff is  
11 able to perform previous work, that Plaintiff is deemed not  
12 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At  
13 this step, plaintiff's residual functional capacity (RFC)  
14 assessment is considered. If plaintiff cannot perform this work,  
15 the fifth and final step in the process determines whether  
16 plaintiff is able to perform other work in the national economy in  
17 view of plaintiff's residual functional capacity, age, education  
18 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
19 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

20 The initial burden of proof rests upon plaintiff to establish  
21 a *prima facie* case of entitlement to disability benefits.  
22 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*  
23 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
24 met once plaintiff establishes that a physical or mental  
25 impairment prevents the performance of previous work. The burden  
26 then shifts, at step five, to the Commissioner to show that (1)  
27 plaintiff can perform other substantial gainful activity and (2) a  
28 "significant number of jobs exist in the national economy" which

1 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
2 Cir. 1984).

### 3 STANDARD OF REVIEW

4 Congress has provided a limited scope of judicial review of a  
5 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold  
6 the Commissioner's decision, made through an ALJ, when the  
7 determination is not based on legal error and is supported by  
8 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>  
9 Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).  
10 "The [Commissioner's] determination that a plaintiff is not  
11 disabled will be upheld if the findings of fact are supported by  
12 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup>  
13 Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is  
14 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,  
15 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
16 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);  
17 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
18 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
19 evidence as a reasonable mind might accept as adequate to support  
20 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
21 (citations omitted). "[S]uch inferences and conclusions as the  
22 [Commissioner] may reasonably draw from the evidence" will also be  
23 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On  
24 review, the Court considers the record as a whole, not just the  
25 evidence supporting the decision of the Commissioner. *Weetman v.*  
26 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v.*  
27 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

28 It is the role of the trier of fact, not this Court, to

1 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
2 evidence supports more than one rational interpretation, the Court  
3 may not substitute its judgment for that of the Commissioner.  
4 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
5 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by substantial  
6 evidence will still be set aside if the proper legal standards  
7 were not applied in weighing the evidence and making the decision.  
8 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,  
9 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to  
10 support the administrative findings, or if there is conflicting  
11 evidence that will support a finding of either disability or  
12 nondisability, the finding of the Commissioner is conclusive.  
13 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir. 1987).

#### 14 **ALJ'S FINDINGS**

15 The ALJ found Ms. Mosher met the DIB requirements and was  
16 insured through June 30, 2009 (Tr. 13, 15). At step one ALJ Ausems  
17 found plaintiff did not engage in substantial gainful activity  
18 after onset (Tr. 15). At steps two and three, she found plaintiff  
19 suffers from major depressive disorder with alleged dissociative  
20 features; generalized anxiety disorder; posttraumatic stress  
21 disorder (PTSD), and avoidant personality disorder with  
22 depressive, paranoid and borderline traits, impairments that are  
23 severe but do not meet or medically equal a Listed impairment (Tr.  
24 15-16). The ALJ found plaintiff less than completely credible (Tr.  
25 19). At step four, relying on the VE, she found plaintiff is able  
26 to perform past relevant work (Tr. 23). Accordingly, the ALJ found  
27 plaintiff has not been disabled as defined by the Social Security  
28 Act at any time from onset through March 5, 2010, the date of the

1 decision (Tr. 24).

## 2 ISSUES

3 Plaintiff contends the ALJ erred when she assessed the  
4 evidence (ECF No. 16 at 8-18). The Commissioner responds that  
5 because the ALJ's decision is supported by substantial evidence  
6 and free of legal error, the Court should affirm (ECF No. 24 at 6-  
7 8).

## 8 DISCUSSION

9 Plaintiff contends the ALJ erred when she weighed the  
10 evidence, especially when she discounted the opinion of her  
11 treating counselor (ECF No. 16 at 8). The Commissioner asserts the  
12 ALJ's reasons for discounting the counselor's contradicted opinion  
13 are specific, legitimate and supported by substantial evidence. He  
14 asks the Court to affirm (ECF No. 24 at 17).

### 15 *Treating and examining professionals*

16 Plaintiff contends the ALJ failed to properly credit the  
17 opinions of treating professionals at Spokane Mental Health and  
18 Family Services of Spokane (ECF No. 16 at 9-10, 13-17), and of an  
19 examining psychologist.

#### 20 **A. Treating professionals**

21 Plaintiff saw Michael Dobler, MSW, at Family Service of  
22 Spokane about twice a week from May 2005 until April 2009 (Tr.  
23 173-229, 245-271, 390-397, 409-414, 417-423), and monthly from May  
24 through July 2009 (Tr. 415-416, 424). Ms. Mosher reported she  
25 attempted suicide in March 2005 by driving her car into a median.  
26 In May 2005 she "thought of taking all her brother's ADHD and  
27 sleeping" medications (Tr. 238). Mr. Dobler opined plaintiff's GAF

1 was 20.<sup>2</sup> From September-November 2005, he opined it was 30.<sup>3</sup> From  
 2 March-May 2006, he opined her GAF was 35.<sup>4</sup> In November 2006, 50,<sup>5</sup>  
 3 and, in November 2007, Mr. Dobler opined plaintiff's GAF was 50  
 4 (Tr. 245, 251, 256, 258, 261-262, 264).

5 Mr. Dobler notes plaintiff at times reports dissociating and  
 6 having "alters," or other personalities<sup>6</sup>. Some of the records

---

8 <sup>2</sup>A GAF of 20 indicates some danger of hurting self or  
 9 others(e.g., suicide attempts without clear expectation of death;  
 frequently violent; manic excitement) or occasionally fails to  
 10 maintain minimal personal hygiene (e.g., smears feces) or gross  
 impairment in communication (e.g., largely incoherent or mute).

11 <sup>3</sup>A GAF of 30 indicates behavior is considerably influenced  
 12 by delusions or hallucinations or serious impairment in  
 communication or judgment (e.g., sometimes incoherent, acts  
 13 grossly inappropriately, suicidal preoccupation) or inability to  
 14 function in almost all areas (e.g., stays in bed all day; no job,  
 home or friends).

15 <sup>4</sup>A GAF of 35 indicates some impairment in reality testing or  
 16 communication (e.g., speech is at times illogical, obscure, or  
 irrelevant) or major impairment in several areas, such as work or  
 17 school, family relations, judgment, thinking or mood (e.g.,  
 18 depressed man avoids friends, neglects family, and is unable to  
 work; child frequently beats up other children, is defiant at  
 19 home, and is failing at school).

20 <sup>5</sup>A GAF of 50 indicates serious symptoms (e.g., suicidal  
 21 ideation, severe obsessional rituals, frequent shoplifting) or  
 any serious impairment in social, occupational, or school  
 22 functioning (e.g., no friends, unable to keep a job).

23 <sup>6</sup>The ALJ found plaintiff suffers from major depressive  
 disorder with alleged dissociative features (Tr. 15).  
 24 Dissociative identity disorder (DID), formerly multiple  
 personality disorder, is characterized by the presence of two or  
 25 more distinct identities or personality states that recurrently  
 take control of the individual's behavior accompanied by an  
 26 inability to recall important personal information that is too  
 extensive to be explained by ordinary forgetfulness.  
 27 Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Ed.  
 28 (DSM IV at p. 477).



1 in 2005 refer to alters called Mama Liss, Lara, Nicole, Heidi,  
2 Dad, and Melissa-Marie (Tr. 204-210). On June 2, 2005, plaintiff  
3 reported she hears voices once a month or less (Tr. 224).

4 Some 2006 records refer to "alters." Plaintiff reports she is  
5 "Missy"; she also refers to "Lara" and "Mama Liss" (February 22  
6 and 23, 2006 at Tr. 200-202; March 2, 2006 at Tr. 199). About  
7 three weeks later, on March 20, 2006, there is no indication of  
8 dissociating (Tr. 197). Then, about a month later, on April 27,  
9 2006, plaintiff reports an "alter" came out to do housework (Tr.  
10 195). On June 15, 2006, Ms. Mosher reports she is not "splitting,"  
11 and not hearing voices (Tr. 192). On November 1, 2006, plaintiff  
12 is not dissociating (Tr. 182).

13 Records in 2007 are similar. On March 14, 2007, plaintiff  
14 mentions "alters" (Tr. 177). Then, about a month later, on April  
15 19, 2007, Ms. Mosher says she is dissociating but cannot recall  
16 it; "alters warned her" (Tr. 175). Next, in September 2007, Mr.  
17 Dobler reminded plaintiff she did not dissociate when taking  
18 abilify (Tr. 284), a medication stopped during pregnancy and  
19 nursing.

20 Finally, in May 2008, plaintiff tells Mr. Dobler she has not  
21 "heard many voices at all" (Tr. 268), hears no voices (Tr. 275),  
22 and feels she is doing "quite well now" (Tr. 274).

23 Terry Patterson, ARNP, and later Melissa Allman, ARNP, saw  
24 plaintiff roughly once a month for medication management, from May  
25 2005 through August 2009 (Tr. 291-348; 399-402; 425-431). Records  
26 show symptoms improved shortly after starting psychotropic  
27 medication (Tr. 19, referring to 177-227). Patterson observes in  
28 January 2008 plaintiff's "depression is lifting since being

1 changed from her pregnancy medications to the medications that she  
2 was on prior to pregnancy" (Tr. 3315). On June 3, 2008, Patterson  
3 opines plaintiff "is very healthy" (Tr. 307).

4 *B. Examining professionals*

5 Joyce Everhart, Ph.D., evaluated plaintiff on September 23,  
6 2008 (Tr. 363-369). She reviewed Mr. Dobler's records from January  
7 to August of 2008 (Tr. 363). Dr. Everhart diagnosed, among other  
8 conditions, malingering, and a GAF of 60<sup>7</sup> (Tr. 368). She notes Ms.  
9 Mosher's reported auditory hallucinations since high school  
10 "appears somewhat inconsistent" with the May 2005 opinion of  
11 examining psychiatrist Thomas Rodgers, M.D., who found no evidence  
12 of hallucinations (Tr. 364, referring to Tr. 171). Dr. Everhart  
13 observes plaintiff's currently reported PTSD symptoms also appears  
14 inconsistent with the 2008 progress notes from treatment providers  
15 at Family Services of Spokane. On May 28, 2008, nurse practitioner  
16 Patterson opined plaintiff is "[s]table on medications. Post  
17 traumatic stress disorder well controlled" (Tr. 308).

18 John Arnold, Ph.D, evaluated plaintiff on September 16, 2009  
19 (Tr. 432-444). Ms. Mosher was in a car accident at age sixteen,  
20 lost consciousness for several hours, and "almost died" (Tr. 433).  
21 He diagnosed PTSD (delayed onset), major depression (recurrent,  
22 moderate), and avoidant personality disorder (NOS). Dr. Arnold  
23 made rule out diagnoses of somatoform disorder and borderline  
24 intellectual functioning, and opined plaintiff's current GAF is  
25 56, indicating moderate symptoms or limitations (Tr. 435). He  
26 assessed two severe, six marked, and five moderate limitations  
27 (Tr. 440-441).

---

28 <sup>7</sup>A GAF of 60 indicates moderate symptoms or limitations.  
ORDER GRANTING DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

1 *C. Credibility*

2 To aid in weighing the conflicting medical evidence, the ALJ  
3 evaluated plaintiff's credibility and found her less than fully  
4 credible, a finding she does not challenge on appeal. Credibility  
5 determinations bear on evaluations of medical evidence when an ALJ  
6 is presented with conflicting medical opinions or inconsistency  
7 between a claimant's subjective complaints and diagnosed  
8 condition. See *Webb v. Barnhart*, 433 F. 3d 683, 688 (9<sup>th</sup> Cir.  
9 2005).

10 It is the province of the ALJ to make credibility  
11 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
12 1995). However, the ALJ's findings must be supported by specific  
13 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
14 1990). Once the claimant produces medical evidence of an  
15 underlying medical impairment, the ALJ may not discredit testimony  
16 as to the severity of an impairment because it is unsupported by  
17 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
18 1998). Absent affirmative evidence of malingering, the ALJ's  
19 reasons for rejecting the claimant's testimony must be "clear and  
20 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995).  
21 "General findings are insufficient: rather the ALJ must identify  
22 what testimony not credible and what evidence undermines the  
23 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*  
24 *Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

25 Dr. Everhart diagnosed malingering based on test results.  
26 Even if this diagnosis is discredited, the ALJ gave clear and  
27 convincing reasons for her credibility assessment. She relied, in  
28 part, on activities inconsistent with claimed severe impairment,

1 complaints unsupported by objective medical evidence, and  
2 inconsistent statements when she found Ms. Mosher less than  
3 completely credible (Tr. 19-21).

4 The record supports the ALJ's reasons.

5 *Activities.* During the relevant period of May 12, 2005,  
6 through March 5, 2010, the ALJ notes plaintiff's activities have  
7 included laundry, cooking, driving, shopping, traveling to  
8 California, and caring for "young children without any particular  
9 assistance" (Tr. 19-21, Exhibit 3F/47, 4F/51). It is well-  
10 established that the nature of daily activities may be considered  
11 when evaluating credibility. *Fair v. Bowen*, 885 F.2d 597, 603 (9<sup>th</sup>  
12 Cir. 1989). Activities such as caring for young children may  
13 undermine claims of disabling impairment. *See Rollins v.*  
14 *Massanari*, 261 F.3d 853, 857 (9<sup>th</sup> Cir. 2001).

15 *Lack of objective medical evidence.* The ALJ notes plaintiff's  
16 treatment records contradict her testimony. As noted, symptoms  
17 improved shortly after plaintiff started treatment and medication  
18 (Tr. 19, relying on Exhibit 3F/5-51,60). Plaintiff stopped taking  
19 prescribed psychotropic medications in June 2006 due to pregnancy  
20 (Tr. 20; Exhibit 3F/20). After she restarted medication, in March  
21 2008 Ms. Mosher admitted her mood was better (Tr. 20, Exhibit  
22 4F/45). As noted in May 2008 she is described as stable on  
23 medication. PTSD symptoms are well controlled (Tr. 20; Exhibit  
24 5F/18-19). In July 2008, plaintiff denied any psychosis (Tr. 20,  
25 Exhibit 5F/16).

26 Although an ALJ may not reject a claimant's subjective  
27 complaints based solely on the lack of medical evidence, it is a  
28 factor the ALJ can consider. *Burch v. Barnhart*, 400 F.3d 676, 680

1 (9<sup>th</sup> Cir. 2005), citing *Bunnell v. Sullivan*, 947 F.2d 341, 345-346  
2 (9<sup>th</sup> Cir. 1991). The ALJ relied on more than the lack of objective  
3 evidence when he assessed credibility. Contradiction with the  
4 medical record is a sufficient basis for rejecting a claimant's  
5 subjective testimony. See *Carmickle v. Soc. Sec. Admin.*, 533 F.3d  
6 1155, 1162 (9<sup>th</sup> Cir. 2008), citing *Johnson v. Shalala*, 60 F.3d  
7 1428, 1434 (9<sup>th</sup> Cir. 1995). Impairments that can be controlled  
8 effectively with medication are not disabling for the purpose of  
9 determining eligibility for SSI benefits. *Warre v. Comm'r of Soc.*  
10 *Sec. Admin.*, 439 F.3d 1001, 1006 (9<sup>th</sup> Cir. 2006)(citations  
11 omitted).

12 *Inconsistent statements.* The ALJ observes plaintiff reports  
13 she is afraid to drive, yet admitted "she drives her partner  
14 around in search of prospective jobs" (Tr. 19; Exhibit  
15 3E). Plaintiff told Dr. Arnold she nearly died after a car  
16 accident at age sixteen; told Dr. Rodgers she was not even  
17 hospitalized, and told providers at Family Services of Spokane she  
18 was hospitalized for two days and it was believed she was going to  
19 die (Tr. 21; compare Exhibit 16F/2 with 2F/1 and with 4F/6).  
20 Inconsistencies either in a claimant's testimony or between her  
21 testimony and her conduct supports a decision by the ALJ that a  
22 claimant lacks credibility. *Thomas v. Barnhart*, 278 F.3d 947, 958-  
23 959 (9<sup>th</sup> Cir. 2002).

24 The ALJ's reasons for finding plaintiff less than fully  
25 credible are clear, convincing, and fully supported by the record.  
26 See *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9<sup>th</sup> Cir. 2002)  
27 (extent of daily activities is properly considered). Although the  
28 evidence supports more than one rational interpretation, the Court

1 may not substitute its judgment for that of the Commissioner  
2 where, as here, proper legal standards were applied in weighing  
3 the evidence and making the decision. *See Rollins*, 261 F.3d at  
4 857, citing *Fair v. Bowen*, 885 F.2d 597, 604 (9<sup>th</sup> Cir. 1989).

5 The ALJ gave specific and legitimate reasons supported by  
6 substantial evidence for discounting Mr. Dobler's contradicted  
7 opinion. *See Lester v. Chater*, 81 F.3d 821, 830-831 (9<sup>th</sup> Cir.  
8 1995). First, Mr. Dobler's opinions are internally inconsistent.  
9 He opined plaintiff's GAF was 20 in May 2005, 30 in September and  
10 November 2005, 35 in March and May 2006, and 50 in November 2006  
11 and 2007. Despite these assessed severe limitations or symptoms,  
12 Mr. Dobler's contemporaneous chart notes repeatedly describe  
13 plaintiff as demonstrating a good affect, relaxed, and showing  
14 logical and progressive thought processes (Tr. 21-22). *See e.g.*,  
15 Tr. 271 (affect good, alert); Tr. 274 (mood good and stable); and  
16 Tr. 173 (good grooming, hygiene and affect; thoughts logical and  
17 progressive).

18 Next, the ALJ notes Mr. Dobler is not an acceptable medical  
19 source (Tr. 22). She is correct. *See* 20 C.F.R. §§ 404.1513 and  
20 416.913. Mr. Dobler appears to base his opinions largely on  
21 plaintiff's unreliable self-report. His opinions are conclusory,  
22 Finally, assessed severe functional limitations are inconsistent  
23 with her daily activities. Each is a specific, legitimate reason  
24 supported by substantial evidence. *See Batson v. Comm'r of Soc.*  
25 *Sec. Admin.*, 359 F.3d 1190, 1195 (9<sup>th</sup> Cir. 2004)(affirming ALJ's  
26 decision to discount opinions of treating physicians because  
27 rendered on a checklist form, lacked supportive objective  
28 evidence, was contradicted by other statements and assessments of

1 the claimant's medical condition, and was based on claimant's  
2 unreliable subjective descriptions of pain).

3 The ALJ rejected Dr. Arnold's opinion because it also appears  
4 based at least in part on plaintiff's unreliable reporting. The  
5 assessed severe and marked limitations contrast "sharply with  
6 other substantial evidence of record," including plaintiff's  
7 ability to consistently care for young children without help. The  
8 ALJ stated she considered the reason Dr. Arnold made his report  
9 (at counsel's request in support of plaintiff's claim for  
10 benefits, rather than to obtain treatment)(Tr. 22), error if any  
11 is clearly harmless since the remaining reasons are specific,  
12 legitimate and supported by the record. The error is  
13 inconsequential to the ultimate nondisability determination. See  
14 *Burch v. Barnhart*, 400 F.3d 676, 682 (9<sup>th</sup> Cir. 2005).

15 The ALJ is responsible for reviewing the evidence and  
16 resolving conflicts or ambiguities in testimony. *Magallanes v.*  
17 *Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). It is the role of the  
18 trier of fact, not this court, to resolve conflicts in evidence.  
19 *Richardson*, 402 U.S. at 400. The court has a limited role in  
20 determining whether the ALJ's decision is supported by substantial  
21 evidence and may not substitute its own judgment for that of the  
22 ALJ, even if it might justifiably have reached a different result  
23 upon de novo review. 42 U.S.C. § 405 (g).

24 After review the Court finds no harmful error in the ALJ's  
25 decision.

#### 26 CONCLUSION

27 Having reviewed the record and the ALJ's conclusions, this  
28 court finds that the ALJ's decision is free of legal error and

1 supported by substantial evidence..

2 **IT IS ORDERED:**

3 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 23**) is  
4 **GRANTED.**

5 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 15**) is  
6 **DENIED.**

7 The District Court Executive is directed to file this Order,  
8 provide copies to counsel for Plaintiff and Defendant, enter  
9 judgment in favor of Defendant, and **CLOSE** this file.

10 DATED this 12th day of July, 2011.

11 s/ James P. Hutton  
12 JAMES P. HUTTON  
13 UNITED STATES MAGISTRATE JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28